

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 550**

BY SENATORS WOODRUM, ROBERTS, ROMANO, LINDSAY,

AND STOLLINGS

[Originating in the Committee on Government

Organization; reported on March 24, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §7-28-1 and §7-28-2; and to amend and reenact §11-10-11c of said code, all  
3 relating generally to the authorization and administration of county sales and use taxes;  
4 setting forth legislative intent; providing counties with authority to impose a county sales  
5 and use tax of one percent under certain circumstances; clarifying that a county sales and  
6 use tax does not apply to incorporated areas of the county; requiring counties imposing a  
7 county sales tax to use the services of the Tax Commissioner to administer the tax; and  
8 setting forth administrative procedures for the collection and administration of such taxes.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 28. LOCAL CONTROL AND ACCOUNTABILITY ACT.**

#### **§7-28-1. Legislative intent; authority to impose county sales tax; applicability; administration.**

1 (a) Legislative intent. — The Legislature hereby finds and declares that county  
2 commissions today face numerous challenges managing their budgets and other resources, and  
3 that it is in the public's best interest to provide counties with the local control, flexibility, and  
4 accountability to address the financial demands that increasing regional jail bills, infrastructure  
5 repairs, and other expenses place on our county government, while also ensuring that counties  
6 remain good stewards of taxpayer funds. Therefore, it is the intent of the Legislature in enacting  
7 this article to provide counties with the local control and monetary flexibility necessary to meet  
8 their financial needs and plan for unexpected events in the future.

9 (b) Authority to impose county sales tax. — On and after July 1, 2021, any county may  
10 impose and collect, by a majority vote of its county commission, a county sales and use tax of  
11 one percent: *Provided*, That a county commission must conduct a public hearing prior to any  
12 consideration of the proposed one percent sales and use tax. Notice of the public hearing shall

13 be given at least seven days before the date of the hearing by the publication of a notice in at  
14 least one paper of general circulation in such county.

15 (c) *Applicability.* — In no event shall the county sales and use tax authorized by this  
16 section be applicable to an incorporated area within the county. The sales and use tax authorized  
17 by this section may not apply to the sale of motor fuel or motor vehicles.

**§7-28-2. State administration of county sales and use taxes.**

1 (a) *Administration.* — Any county that imposes a county sales tax pursuant to §7-28-1 of  
2 this code shall use the services of the Tax Commissioner to administer, enforce, and collect the  
3 tax in the same manner as the state consumers sales and service tax and use tax under the  
4 provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code, except for  
5 any provisions therein relating to the sale of motor fuel or motor vehicles.

6 (b) *Notification to Tax Commissioner.* — Any county that imposes a sales and use tax  
7 pursuant to §7-28-1 of this code, or otherwise changes the rate of such taxes, shall notify the Tax  
8 Commissioner at least 180 days before the effective date of the imposition of the taxes or the  
9 change in the rate of the taxes.

10 (c) *Application of state sales tax law.* — The state consumers sales and service tax law,  
11 as set forth in §11-15-1 et seq. of this code, the amendments to that article, and the rules of the  
12 Tax Commissioner relating to the laws shall apply to a county sales and use tax imposed pursuant  
13 to §7-28-1 of this code to the extent the rules and laws are applicable.

14 (d) *Application of state use tax law.* — The state use tax law, set forth in §11-15A-1 et seq.  
15 of this code, the amendments to that article, and the rules of the Tax Commissioner relating to  
16 the laws shall apply to a county sales and use tax imposed pursuant to §7-28-1 of this code to  
17 the extent the rules and laws are applicable.

18 (e) *Definitions incorporated.* — Any term used in §7-28-1 et seq. of this code, or in an  
19 ordinance adopted pursuant to this article that is defined in the provisions of §11-15-1 et  
20 seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code, as amended, shall have the same

21 meaning when used in this article or in an ordinance adopted pursuant to this article, unless the  
22 context in which the term is used clearly requires a different result.

23 (f) Automatic updating. — Any amendments to §11-9-1 et seq., §11-10-1 et seq., §11-15-  
24 1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code shall automatically apply to a  
25 sales or use tax imposed pursuant to §7-28-1 et seq. of this code, to the extent applicable.

26 (g) Fee for services. — The Tax Commissioner may retain from collections a fee not to  
27 exceed the lesser of the cost of the service provided or five percent of the amount of taxes  
28 imposed pursuant to §7-28-1 et seq. of this code that are collected by the Tax Commissioner  
29 during any fiscal year. Any such fees collected shall be deposited in the Local Sales Tax and  
30 Excise Tax Administration Fund pursuant to §11-10-11C of this code.

31 (h) Administrative procedures. — Each and every provision of the West Virginia Tax  
32 Procedure and Administration Act set forth in §11-10-1 et seq. of this code applies to the taxes  
33 imposed pursuant to §7-28-1 of this code, except as otherwise expressly provided in this article,  
34 with like effect as if that act were applicable only to the taxes imposed by this article and were set  
35 forth in extenso in this article.

36 (i) Criminal penalties. — Each and every provision of the West Virginia Tax Crimes and  
37 Penalties Act set forth in §11-9-1 et seq. of this code applies to the taxes imposed pursuant to §7-  
38 28-1 of this code with like effect as if that act were applicable only to the taxes imposed pursuant  
39 to §7-28-1 et seq. of this code, and were set forth in extenso in §7-28-1 et seq. of this code.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

#### **§11-10-11c. State administration of local sales and use taxes and excise taxes; jurisdiction and standing before the Office of Tax Appeals; rule-making authority.**

1 (a) The Tax Commissioner has exclusive responsibility for administering, collecting, and  
2 enforcing all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 et seq., §7-  
3 28-1, §8-1-5a, §8-13C-1 et seq., and §8-38-1 et seq. of this code.

4 (b) Pursuant to, and limited by, the provisions of §11-10A-8 of this code, the Office of Tax  
5 Appeals has exclusive and original jurisdiction to hear disputes arising from any local sales and  
6 use taxes and excise taxes for which the Tax Commissioner has exclusive administration,  
7 enforcement, and collection responsibility. No municipality or county has standing before the  
8 Office of Tax Appeals in any dispute arising under any local sales and use tax and excise tax  
9 upon which the Tax Commissioner has exclusive responsibility for administration, enforcement,  
10 and collection.

11 (c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner  
12 may assess a fee, to be established by legislative rule pursuant to the provisions of §29A-3-1 et  
13 seq. of this code, to be retained from collections authorized by §8-1-5a and §8-13C-6 of this code:  
14 *Provided*, That the fee may not exceed five percent of such collections in total including any fee  
15 otherwise authorized by this code or any duly enacted ordinance.

16 (d) *Establishment of special revenue account.* —

17 (1) There is created in the State Treasury a special revenue revolving fund account known  
18 as the Local Sales Tax and Excise Tax Administration Fund. Expenditures from the fund shall be  
19 for the purposes set forth in this section and are not authorized from collections but are to be  
20 made only in accordance with appropriation by the Legislature and in accordance with the  
21 provisions of §12-3-1 et seq. of this code: *Provided*, That for the fiscal year ending June 30, 2014,  
22 expenditures are authorized from collections rather than pursuant to appropriation by the  
23 Legislature. The fund shall consist of:

24 (A) Any funds collected pursuant to subsection (c) of this section;

25 (B) Any funds received on and after July 1, 2013, from fees retained by the Tax  
26 Commissioner pursuant to §8-13C-6 of this code;

27 (C) Amounts deducted and retained by the Tax Commissioner under §11-10-11a(e) of this  
28 code;

29 (D) Any future funds appropriated by the Legislature or transferred by any public agency  
30 as contemplated or permitted by applicable federal or state law; and

31 (E) Any accrued interest or other return on the moneys in the fund.

32 (2) On July 1, 2013, all moneys in the Tax Department Municipal Sales and Use Tax  
33 Operations Fund established under §8-13C-6 of this code shall be transferred to the Local Sales  
34 Tax and Excise Tax Administration Fund established in this section.

35 (3) On July 1, 2013, all moneys in the Special District Excise Tax Administration Fund  
36 established under §11-10-11b of this code shall be transferred to the Local Sales Tax and Excise  
37 Tax Administration Fund established in this section.

38 (4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may  
39 be expended by the Tax Commissioner for the general administration, collection, and  
40 enforcement of all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 *et*  
41 *seq.*, §7-28-1, §8-1-5a, §8-13C-1 *et seq.*, and §8-38-1 *et seq.* of this code.

42 (e) Notwithstanding the provisions of §11-10-11b of this code. The Tax Commissioner may  
43 prescribe by rule the schedule and manner for deposits of moneys into the Local Sales Tax and  
44 Excise Tax Administration Fund and any other administrative and procedural requirements as  
45 may be useful or necessary for the management and handling of the fund.

46 (f) *Effective date.* — The provisions of this section enacted in ~~2013~~ 2021 during the regular  
47 session of the Legislature are effective on and after July 1, ~~2013~~ 2021.